# MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION OPEN MEETING MINUTES May 26, 2020

May 26, 2020

This meeting was held via internet and telephone conference call.

## Trustees Participating:

Michael Calkins, Chair William Allen, Vice-Chair

Jerome Klasmeier, representing Comptroller Peter Franchot

Joanna Kille, representing Treasurer Nancy Kopp

Deborah Herr Cornwell, representing Secretary Robert McCord, Maryland

Department of Planning

Julie Oberg, representing Secretary Joseph Bartenfelder, Maryland Department

of Agriculture

Catherine Cosgrove

Cricket Goodall

Elizabeth Hill

James Weddle

J. Bruce Yerkes

#### **Trustees Absent:**

Robin Kable Joseph Wood

# Others Participating:

Michelle Cable, MALPF Executive Director

Diane Chasse, MALPF Administrator

Chana Turner, MALPF Administrator

Sarel Cousins, MALPF Administrator

Amanda Massoni, MALPF Fiscal Specialist

Kim Hoxter, MALPF Monitoring, Enforcement and Database Coordinator

Justin Hayes, Assistant Attorney General, Department of Agriculture

Patrick Martyn, Assistant Attorney General, Department of General Services

Renee Dyson, Assistant Attorney General, Department of General Services

Michael Steadman, Jr., Assistant Attorney General, Maryland Department of Agriculture

Megan Benjamin, Baltimore County Program Staff

Ronald Marney, Calvert County Program Administrator

Beth Beales, Caroline County Program Administrator

Devyn King, Cecil County Program Administrator

Anne Bradley, Frederick County Program Administrator

Shannon O'Neil, Frederick County Program Staff

William Amoss, Harford County Program Administrator

Carla Gerber, Kent County Program Staff

Mike Scheffel, Montgomery County Program Administrator

Jeanine Nutter, Prince George's County Program Administrator

Fatimah Hasan, Maryland National Capital Park & Planning Commission

Donna Sasscer, St. Mary's County Program Administrator

Martin Sokolich, Talbot County Program Administrator

Kim Livezey, MDOT SHA

Zahyrah Ramirez, MDOT SHA

Rawaa Al-Tameemi, MDOT SHA

Sutapa Samanta, MDOT SHA

Dr. David Smack, Kent County Landowner

Kevin Atticks, Grow & Fortify

Nick Gehlsen, Baltimore County Landowner

Wendy Scott Napier, DGS

Julie Enger, DGS Appraiser Jennifer Hatchet, Resource Environmental Solutions (RES) Mike O'Neill, Resource Environmental Solutions (RES) Allison Reeves, Resource Environmental Solutions (RES) Joe Caterino, Resource Environmental Solutions (RES)

Mr. Calkins, Chair, called the meeting to order at 9:03 a.m. via internet and telephone conference call. Ms. Cable stated the names of the participants on the conference call, for the record, and asked anyone that was not named to identify themselves.

#### **APPROVAL OF MINUTES** ١.

A. Approval of Open Minutes from April 28, 2020.

Motion #1:

To approve minutes from April 28, 2020.

Motion:

Herr-Cornwell

Second:

Allen

Status:

Approved

#### ADDITION / DELETION OF AGENDA ITEMS II.

#### **ANNOUNCEMENTS** II.

Ms. Cable thanked all the attendees for participating in the MALPF teleconference Board meeting. Ms. Cable asked all participants to keep themselves muted, and when unmuted, to clearly state their names before asking a question, or making a motion, etc.. Ms. Cable also reminded the Board members that when motions were made, Board members only needed to state their names if they were voting in opposition to the motion, rather than saying "aye" to vote in favor of a motion.

Ms. Cable informed the Board that MALPF is currently undergoing an audit by the Department of Legislative Services Ms. Cable further explained that MALPF has not been audited since 2015, due to a change in the law in 2016, which removed the requirement that MALPF be audited annually. As of 2016, MALPF is now audited in the course of routine MDA audits. Ms. Cable shared the happy news that Amanda Wilson got married this month and is now Amanda Massoni, congratulations!

#### **EASEMENT AMENDMENTS** IV.

#### **CECIL COUNTY** A.

File #07-88-05ex1 1.

Sean Hurm, et al

~220 acres

Request - Cecil County:

Request to exclude up to 2.0 acres each from the easement for two child lots for Matthew L. Hurm and Kimberly Hurm Combs.

Recommendation:

Staff recommends approval.

Ms. Cousins introduced the item. Ms. King was available to address any questions.

Motion #2:

To approve two child lots for Matthew L. Hurm and Kimberly Hurm

Combs, up to 2.0 acres each. dwelling.

Motion:

Yerkes

Second:

Allen

Status:

Approved

### B. FREDERICK COUNTY

1. File #10-87-05ex1

Lenhart, Harold, Jr. and Kathleen

~103.5 acres

Request - Frederick County:

Request for a 5-year extension to the validity of the preliminary release for the approved child lot for Brenda.

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval for the extension.

Ms. Chasse introduced the item. Ms. Bradley and O'Neil were available to address any questions.

Motion #3:

To approve a 5-year extension to the validity of the preliminary

release for the child's lot.

Motion:

Kille

Second:

Weddle

Status:

Approved

Frey Family, LLC

~140.8 acres

Request - Frederick County:

File #10-93-01B

Request to approve a Stream Restoration Overlay Easement, totaling 7.931 acres.

Recommendation:

2

Staff recommends approval subject to the receipt of recommendations from the Office of Resource Conservation, and inclusion of those recommendations as conditions of approval - provided that if any recommendation from the Office of Resource Conservation is not in conformity with any MALPF policy, regulation, or statute, or might otherwise have a negative effect on the agricultural integrity of the farm, such recommendation must be presented to the Board for approval. With that condition, the project will meet the criteria in the Water Resources Overlay Easement Policy. The approval is also subject to review and approval of the Overlay Deed of Easement, which shall include any required right of access for to access the easement area, by Foundation staff, and the Office of the Attorney General.

Ms. Chasse introduced the item. Ms. Bradley and O'Neil were available to address any questions. Staff members from RES were also available to address any questions.

Motion #4:

To approve the Stream Restoration Overlay Easement, incorporating MALPF Staff recommendations as conditions of

approval.

Motion:

Kille

Second:

Weddle

Status:

Approved

#### C. QUEEN ANNE'S COUNTY

1. File #17-88-07

Willis, Linda

~225 acres

Request - Queen Anne's County:

Request for a 5-year extension to the validity of the preliminary release for the approved child lot for daughter, Lori Willis

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval for the extension.

Ms. Chasse introduced the item.

Motion #5:

To approve a 5-year extension to the validity of the preliminary

release for the child's lot for Lori Willis.

Motion: Status:

Yerkes Approved Second:

Weddle

HARFORD COUNTY D.

> 1. File #12-98-05e

McNutt, Anthony and Teresa

~110.347 acres

Request - Harford County:

Request to approve a 2-acre lot from the easement for child's lot for son, Brian.

Recommendation:

Staff recommends approval.

Ms. Chasse introduced the item. Mr. Amoss was available to address any questions.

Motion #6:

To approve a child's lot up to 2-acres lot from the easement for son,

Brian McNutt.

Motion:

Herr-Cornwell

Second:

Kille

Status:

Approved

E. **BALTIMORE COUNTY** 

> File #03-13-09 1.

Gehlsen, Nick

~85 acres

Request - Baltimore County:

Request to exclude up to 2.0 acres from the easement for an unrestricted lot.

Recommendation:

Staff recommends approval.

Ms. Turner introduced the item. Ms. Benjamin was available to address any questions.

Motion #7:

To approve an unrestricted lot of up to 2.0 acres from the

easement.

Motion:

Herr-Cornwell

Second:

Weddle

Status:

Approved

2. Withdrawn

3. Withdrawn

File #03-08-04 4.

Elseroad, S. Glenn & Ruth

~106.2 acres

Request - Baltimore County:

Request for approval of a perpetual overlay easement to the State Highway Administration (SHA), totaling up to 0.3 acres for the purpose of a road improvement project.

Request approval for temporary construction overlay easement to SHA over two areas, comprising approximately 0.4 acres during construction.

Recommendation:

Staff recommends approval in accordance with COMAR 15.15.16. The public purpose for the perpetual easement is to improve a public road. State law permits condemnation of agricultural easements for public purposes (but not for economic or residential development).

Staff recommends the Board includes the following conditions of approval:

1. The final form of easement be reviewed and approved by MALPF staff and the Office of the Attorney General.

2. Obtain approval of NRCS to proceed with the recording of the perpetual overlay easement in favor of SHA.

Ms. Cable introduced the item. Ms. Benjamin was available to address any questions. Staff from MDOT SHA were available to address any question or concerns.

Ms. Cable highlighted that, because this easement was partially funded with federal money through the Federal Farm and Ranchland Protection Program, administered by the Natural Resources Conservations Service ("NRCS"), and that under their current guidelines, NRCS views the perpetual overlay easement agreement as a subordination to the MALPF easement, NRCS approval is required for the recordation of the perpetual overlay easement. MALPF, MDOT SHA, and Baltimore County have already consulted with NRCS regarding what NRCS will need to review and make a determination about this request.

Motion #8:

To approve a perpetual overlay easement to the State Highway Administration (SHA) totaling up to 0.3 acres for the purpose of a improvement project, incorporating MALPF recommendations as conditions to the approval.

To approve for temporary construction overlay easement to SHA over two areas comprising approximately 0.4 acres during construction.

Motion:

Herr-Cornwell

Second:

Allen

Status:

Approved

#### **CALVERT COUNTY** F.

Zentgraft, Charles and William Jr. 1. File #04-84-05A

~76 acres

#### Request - Calvert County:

Request for a 5-year extension of a preliminary release previously approved for a child lot for William Zentgraft, Jr.

#### Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval for the extension.

Ms. Turner introduced the item. Mr. Marney was available to address any questions.

Motion #9:

To approve a 5-year extension of a preliminary release for a child lot for William Zentgraft, Jr.

Motion:

Yerkes

Second:

Weddle

Status:

Approved

#### G. KENT COUNTY

1. File #14-00-11 ACED LLC, (David & Eileen Smack)

~87 acres

## Request - Kent County:

Request approval to establish a winery and tasting room, including an accessory sales area.

## Recommendation:

Staff recommends approval pursuant to Agriculture Article - Annotated Code of Maryland, Section 2-513(b), COMAR 15.15.07, and more specifically under the Foundation's Guidelines for Requested Use of Land (Uses Policy), Sections A.10. -Processed (value added) farm and forest products; and Accessory Sales as defined in the Uses Policy.

Staff recommendation is subject to: 1) requirement that at all times at least one of the members of ACED LLC, the landowner, shall have an ownership interest in Lands Point Winery and Vineyards LLC, the operator of the winery, and that any approval of this request shall terminate if and when ACED LLC sells the property; and 2) compliance with COMAR 03.02.01.

Ms. Turner introduced the item. Dr. Smack and Ms. Gerber were available to address any questions. Ms. Turner explained that the winery includes a portion of landowner's property that is not under the MALPF easement, on which more formal wine tastings and other events would occur. The final approval by the county to hold events on the non-eased portion of the property had not been obtained by the date of the meeting. As such, Ms. Turner added an additional recommendation to clarify that only wine tastings (and no other types of events) can occur on the easement property. Ms. Turner also pointed out that food served at the wine tastings shall be either pre-packaged or prepared off the easement property.

Motion #10:

To approve a winery and tasting room, including an accessory sales area, incorporating MALPF Staff recommendations as

conditions to the approval.

Motion: Status: Kille

Second:

Allen

ANNE ARUNDEL COUNTY

H.

1. File #02-79-01E Chaney, E. Steuart and Dorothy

Approved

~79 acres

Request - Anne Arundel County:

Request for a 5-year extension of a preliminary release previously approved for a child lot for Anna Chaney.

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval.

Ms. Turner introduced the item.

Motion #11:

To approve a 5-year extension of a preliminary release for a

child's lot for Anna Chaney.

Motion:

Weddle

Second:

Oberg

Status:

Approved

2. File #02-79-01E

Chaney, E. Steuart and Dorothy

~79 acres

Request - Anne Arundel County:

Request for a 5-year extension of a preliminary release previously approved for a child lot for S. Hamilton Chaney.

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval.

Ms. Turner introduced the item.

Motion #12:

To approve a 5-year extension of a preliminary release for a

child's lot for S. Hamilton Chaney.

Motion:

Weddle

Second:

Oberg

Status:

Approved

3. File #02-86-02b Perry Farms, LLC

~80 acres

Request - Anne Arundel County:

Request for a 5-year extension of a preliminary release previously approved for a child lot for Heidi Meginnis.

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval.

Ms. Turner introduced the item.

Motion #13:

To approve a 5-year extension of a preliminary release for a

child's lot for a Heidi Meginnis.

Motion: Status: Yerkes Approved Second:

Herr-Cornwell

# V. NEW AGRICULTURAL PRESERVATION EASEMENT PETITIONS:

N/A

### VI. PROGRAM POLICY

A. Appraisal Law

Request:

Staff requests review and discussion of the policy.

Recommendation:

Staff will bring the policy to the June meeting for a Board vote.

### Appraisal Law Proposed Policy

The language in the "appraiser bill" (HB 17/SB 244), which passed in the 2020 session, is as follows:

# THE FOUNDATION MAY USE A FAIR MARKET VALUE DETERMINED IN ACCORDANCE WITH THIS SECTION FOR UP TO 2 YEARS AFTER THE DATE ON WHICH THE FOUNDATION WAS FIRST REQUESTED IN WRITING TO PURCHASE THE EASEMENT.

For applications that were submitted in one cycle, where the properties did not go under easement, the existing appraisals may be used in the next consecutive easement cycle.

However, in lieu of using an existing appraisal, the Foundation *may* wish to order a new appraisal in certain cases, including the following:

- 1. If the applicant rejected a 75% FMV offer or an Easement Value offer in the previous cycle. If an asking price offer is rejected, the appraisal can be re-used.
- If the property has new owners and that transfer was an arms-length transaction, then DGS should evaluate whether the new comp/new sale price has an impact on the existing appraisal.
- 3. There is a change in the application that affects the appraisal, such as a change to the lot selection or configuration of withheld acres.
- 4. There is a significant change in the real estate market in either a downward or upward trend. Some examples may be local in nature such as a County expanding its development envelope, a County change in zoning or a Comprehensive Plan change that may affect value.

- 5. Appraised values that were determined by a DGS-generated "composite" since the original appraisals are more than 30% different.
- 6. Appraisals that a landowner or County Administrator had an objection to for a material reason.
- 7. Appraisals for which there is new information regarding comps or an appraisal provided by the landowner or county administrator.

When the County submits its applications to the Foundation on July 1<sup>st</sup> of each year, the County will provide a letter to indicate whether it wishes to re-use any appraisals from a previous cycle and the justification for the re-use. Foundation staff with consult with the Department of Planning, and the Department of General Services' Appraisal Unit to determine if the re-use of the appraisal(s) is(are) appropriate.

Ms. Chasse presented the draft policy to introduce it to the Board and the Counties.

## VII. INFORMATION AND DISCUSSION

N/A

#### VIII. CLOSED SESSION

Mr. Calkins asked for a motion for adjournment of the meeting to move into a closed session, pursuant to the applicable provisions of General Provisions Article Section 3-305 (b): (7) to consult with counsel to obtain legal advice; and (8) to consult with staff, consultants, or other individuals about pending or potential litigation.

Motion #14:

To adjourn the regular session at 10:13 a.m. to move into a closed session to consult with counsel to obtain legal advice; and to consult with staff, consultants, or other individuals about pending or potential litigation.

Motion:

Herr-Cornwell

Second: Allen

Status:

Approved

The Closed Meeting of the Board was held from 10:20 a.m. to 10:30 a.m., on May 26, 2020 via internet and telephone conference call, pursuant to the provisions of the General Provisions Article Section 3-305 (b): Annotated Code of Maryland:

General Provisions Article Section 3-305(b):

- (7) to consult with counsel to obtain legal advice; and
- (8) to consult with staff, consultants, or other individuals about pending or potential litigation.

During the Closed Meeting, the following Board members were present: Michael Calkins, Chair, William Allen, Vice-Chair, Jerome Klasmeier, representing Comptroller Peter Franchot, Joanna Kille, representing Treasurer Nancy Kopp, Deborah Herr Cornwell, representing Secretary Robert McCord, Maryland Department of Planning, Julie Oberg, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture, Cricket Goodall, Elizabeth Hill, Jim Weddle, and J. Bruce Yerkes.

The following Board members were absent: Catherine Cosgrove, Robin Kable and Joseph Wood

The following MALPF staff and legal representatives were also present during the closed session meeting: Michelle Cable, Diane Chasse, Chana Turner, Sarel Cousins, Kim Hoxter, Amanda Wilson, Robert Day, Justin Hayes, Assistant Attorney General, Maryland Department of Agriculture, Michael Steadman, Jr., Assistant Attorney General, Maryland Department of Agriculture, Patrick Martyn,

Assistant Attorney General, Maryland Department of General Services and Renee Dyson, Assistant Attorney General, Maryland Department of General Services.

# TOPICS DISCUSSED:

- A. Approval of April 28, 2020, Closed Session Minutes
- B. Status Report of Pending Legal Issues

Respectfully Submitted:

Michelle Cable, MALPF Executive Directo